

Remarks:

Responsive to the Official Action mailed August 3, 2005 and made final, Applicant respectfully traverses the Examiner's rejection and requests reconsideration, reexamination and allowance of claims 1-9 and 18-27 in view of the following remarks.

Applicant first acknowledges the withdrawal of the rejection of claims 1- 6, 18, 19 and 23-27 under 35 U.S.C. 102(b) as anticipated by Brown, the withdrawal of the rejection of claims 7-9 and 20-22 under 35 U.S.C. 103 over Brown in view of Knox, III et al. and the withdrawal of the rejection of claims 1-9 and 18-27 under 35 U.S.C. 112 2nd paragraph.

With respect to the present rejection of claims 1-6, 18, 19 and 23-27 under 35 U.S.C. 102(b) as anticipated by Brown, U.S. Patent No. 5,203,470 and the rejection of claims 7-9 and 20-22 under 35 U.S.C. 103(a) as unpatentable over Brown in view Knox, III et al., U.S. Patent No. 4,851,272, Applicant respectfully disagrees and traverses this rejection.

As to the rejection under 102(b) in view of Brown, the Examiner characterizes Brown as disclosing a flange having first and second sides with a spout extending upwardly from the first side of the flange. The Examiner continues that Brown discloses a sealing media, heat stakes, molded to the first side of the flange. Further, the Examiner states that, as seen in Figure 1, the flange and spout are integral with one another and are formed from a single first material, high density polyethylene, while the material, bag, heat sealed/molded over the flange is made from an ethylene octene material such as liner low density polyethylene. The Examiner continues that the bag is made from a multilayer film formed with an outer layer of sealing media that bonds with the material of the spout and that the material that is molded over through heat sealing, or covering the flange of the spout, is formed from a second material that is different from the first material.

As to the rejection under 103(a) in view of Brown and Knox, III, the Examiner has taken the position that Brown teaches the invention except for the material being a ethylene vinyl alcohol (EVA) but states that with the teachings of Knox, III, it would have been to one of skill in the art to use EVA as the first material.

Respectfully, Applicant disagrees. First and foremost, Applicant submits that the Examiner has failed to show the claimed structure in the Brown and/or Knox III references. Specifically, neither Brown nor Knox III show an over-molded fitment that has a flange with

first and second sides, with a spout extending upwardly from the first side and a sealing media (formed from a different material) *molded over and onto the first side of the flange*. Moreover, as claimed, the sealing media is disposed *between the flange and the flexible packaging material* when the fitment is mounted and sealed to the packaging material.

Nowhere is this structure shown in Brown or Knox. Specifically, Brown discloses a fitment having a pair of stake or spikes that project upwardly from the spout flange through the packaging material. In this arrangement, the stakes are melted or otherwise sealed to the packaging material on a side of the material *opposite* of the flange, rather than between the packaging material and the flange (as claimed).

And, according to the Examiner's characterization (as best understood), the sealing media is part of the multilayer material that forms the bag (the flexible packaging), and is not formed as an over-mold on the spout flange.

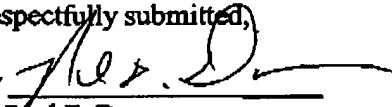
Moreover a review of the Brown patent reveals that the stakes or spikes (that is, the sealing material) are not, as claimed, between the flange and the material, but are sealed over the flange and bag material. Clearly this is not the structure as claimed.

As such, Applicant submits that because the (primary) Brown reference fails to disclose the claimed structure, the rejection under Section 102 (b) is improper and should be withdrawn and the rejection under Section 103(a) likewise is no longer supported. Accordingly, Applicant submits that claims 1-9 and 18-27 are allowable over the art of record and respectfully and earnestly solicits early indication of same.

Applicant believes that there is no fee due in connection with the present AMENDMENT AFTER FINAL. Should there be any questions or concerns in connection with the present submittal, it is respectfully requested that the undersigned be contacted.

Respectfully submitted,

By


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